IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.10 OF 2005

IN

SUIT NO.2812 OF 2001

Mr.Jayesh H. Pandya. ...Petitioner.

vs.

1. Ashok Banwarilal Gupta
and others. ...Respondents.

Mr.D.D.Madan with J.P.Sen i/b. Ms.Jacinta D'Silva, for Petitioner.

Mrs.Jyoti Chavan, for Respondent nos.1, 6 and &.

Mr.Kambli, for Respondent nos.2 & 4.

Mr.Dipak S. Shinde, for Respondent no.3.

Mr.Rakesh Bhalekar, for Respondent no.5.

CORAM: D.K.DESHMUKH,J.

DATED: 11th April,2007

P.C.:-

1. By this petition, the petitioner alleges that the respondent nos. 1 to 4 and 6 & 7 who are the Directors of the respondent no.5 Company have willfully disobeyed the order dated 14.7.2004 passed by the learned Single Judge of this Court on Receiver's report dated 29.7.2003 in suit no.2812 of 2001. It appears that the Court receiver was appointed by the Court on the property and the defendants were appointed as agents of the Receiver to be in possession of the property. They were required to pay royalty. The Receiver took out a report seeking various directions from the Court. The directions that were sought are mentioned by the Court in the order dated 14.7.2004 in paragraph (1). The Court in paragraph (6) of the order has recorded a finding that the amounts to which the Receiver's report relates are due and payable by the defendants. It was argued on behalf of the defendants before the Court that because the amount were due pursuant to

the ad-interim order made by the Court and as the notice of motion is pending the amounts are not payable. Obviously, the Court rejected that contention. The Court ultimately issued several directions. The Court Receiver was directed to file execution application for recovery of the amounts due. By clause 10(v) of the order, the defendant nos. 7, 10, 14, 21, 22 and 23 were directed to file affidavits disclosing all their assets moveable and immoveable. That affidavit was to be filed within a period of two weeks from the date of the order. The defendant no.7 in the suit is present respondent no.1 Ashok B.Gupta. The defendant no.10 in the suit is present respondent no.2 Shivkumar B.Gupta, the defendant no.14 in the suit is present respondent no.3 Ganesh Devi Sharan, the defendant no.21 in the suit is present respondent no.4 Urmila Gupta. The defendant no.22 in the suit is present respondent no.5 Ani Anu Developers Pvt. Ltd. and the defendant no.23 is Ashok Gupta (HUF) through its Karta Ashok Gupta the present respondent no.1. Two weeks that were given by the Court for filing affidavit disclosing the assets expired on 28.7.2004. No

affidavit was filed within that time. It appears that the suit in which the Receiver was appointed and the aforesaid order was made on the receiver's report, came to be dismissed by order dated 6.5.2005. The order of the learned Single Judge dismissing the suit was challenged before the Division Bench in Appeal no.555 of 2005 wherein a notice of motion was taken out by the petitioner which was a notice of motion no.1900 of 2005. By order dated 6.7.2005 operation of the order dismissing the suit was stayed. Obviously, this order has the consequence of continuation of interim orders that were operating in the suit. It appears that the learned Single Judge of this Court by order dated 30.1.2006 discharged the Receiver. It appears that immediately the Appeal Court was moved and by order dated 1.2.2006 the Appeal Court directed that the Receiver appointed on the property in dispute will continue pending the disposal of the notice of motion. It appears that the notice of motion has been disposed by order dated 19.9.2006 and by that order also the appointment of the Court Receiver was continued. However, so far as payment of royalty is concerned,

there was some modification made in relation to some of the flats.

2. This contempt petition was filed on 23.12.2004. In this contempt petition, a show cause notice was issued to the respondents, they were served. Only two respondents have filed their affidavit in reply. i.e. respondent no.1 Ashok Gupta and the respondent no.3 through her power of attorney holder. So far as the other respondents are concerned, they have not even filed their affidavit in reply. In the affidavit filed by the respondent no.1 he refers to the dismissal of the suit by order dated 6.5.2005. But though the affidavit has been filed in the month of August,2005 the respondent no.1 does not even refer to the order dated 6.7.2005 by which the order dismissing the suit had been stayed by the Court, though the respondent was represented by a lawyer before the Court when that order was made. The respondent no.1 in the affidavit then claims that the matter between the parties was referred to conciliation on 12.8.2004 and there in that reference it was stated that no party will take

recourse to the Court. According to the respondent no.1 that conciliation went upto 26.8.2004 and it is stated that it is during that period that the time to file affidavit is expired. It may be pointed out here that the time to file affidavit granted by the Court expired on 28.7.2004 when even according to the respondent no.1 there was no reference to conciliation. Then, it is contended that the order of the Court directing him to file affidavit disclosing his assets came to an end because the Court dismissed the suit.

3. So far as respondent no.3 is concerned, in the affidavit nothing is stated about the merits of the contempt petition. The respondent no.1 has tendered apology in paragraph 2 of his reply. So far as the other respondents are concerned they have neither filed any affidavit as observed above nor they have tendered any apology.

4. I have heard the learned Counsel appearing for both the sides. It is obvious from the order passed by the Court dated 14.7.2004 that in view of

the order passed by the Court appointing receiver and appointing defendants as agents of the Receiver, the defendants were liable to pay royalty which they had not paid. For recovery of those amounts, the Court had directed the Receiver to take up proceedings and it for that purpose that the Court had directed the defendants to file affidavit disclosing their assets. The Court had directed the respondents to file affidavit disclosing the assets. The respondents have not complied with the order within the time which was allowed by the Court. It was submitted before me that because the order was made without prejudice to the chamber summons taken out by the parties, the affidavit was not filed. It is nobody's case that there is any order made in the chamber summons staying the order of the Court directing the defendants to file affidavit. I have been informed that the chamber summons had been taken out by the defendants in relation to the amount of the royalty and therefore, so far as the obligation of the defendants to file affidavit is concerned, the order on the chamber summons is not relevant. The order made in the chamber summons would have become

relevant if on the basis of the affidavit filed by the defendants disclosing their assets either the plaintiff or the Court receiver had taken up the proceedings for attachment of those properties. Therefore, that the order was made without prejudice to the chamber summons had no relevance to the obligation of the defendants to file affidavit. In the affidavit filed by the respondent no.1 one does not find any explanation given as to why the affidavit was not filed by the respondent no.1 within the time that was given by the Court. The justification that the matter was referred to conciliation and the matter was before the Conciliator from 12.8.2004 till 26.8.2004 is also totally irrelevant, because the time granted by the Court for filing affidavit had expired long before 12.8.2004. Even assuming that the matter was pending before the Conciliator from 12.8.2004 till 26.8.2004, during and therefore, during that period affidavit was not filed, one does not find any explanation given as to why the affidavit was not filed thereafter. Even assuming that the order dismissing the suit makes any difference to the obligation cast

on the defendants' to file affidavit pursuant to the order then also the order dismissing the suit was passed on 6.5.2005. One does find any explanation given, except saying that the matter slipped from the mind of the respondent no.1, for not filing affidavit from 25.8.2004 till 6.5.2005. The order dismissing the suit is also not relevant so far as the obligation of the defendants to file affidavit pursuant to the order is concerned because by the order dismissing the suit, the Receiver was not discharged. Even that order came to be immediately stayed by the Division Bench of this Court by order dated 6.7.2005. Even the order made by the learned Single Judge discharging the Receiver came to be immediately stayed by the Appeal Court. Thus, really the Receiver continued on the property throughout. Even today the Receiver continues on the property. Therefore, various orders passed by the Court really did not dilute the obligation of the defendants to file affidavit pursuant to the order passed by the Court. Thus, it is clear from the record that the explanation given by the respondent no.1 for not filing affidavit pursuant to the Court's order is

totally unacceptable. Really speaking it does not amount to an explanation. Those are more excuses made. So far as the other respondents are concerned, they have not even made an attempt to explain as to why they have not filed their affidavits. If one reads affidavit of respondent no.1 it becomes clear that he did not comply with the order because he did not want to comply with the order and he was bent upon defying the order made by the Court. The learned Counsel appearing for the petitioner has rightly pointed out that the conduct of the respondent no.1 is noted by the Court in the order dated 14.7.2004 also. There the defendants had taken the stand that they are not liable to pay royalty because the obligation to pay royalty is cast on them by the ad-interim order. This attitude of the respondents throughout is defying. An apology has been tendered only by the respondent no.1. In my opinion, the conduct of the respondent no.1 throughout shows that the apology is not genuine. As observed above the respondent no.1 has not been able to give any explanation as to why he did not comply with the Court's order within the time allowed by the

Court. One does not find any explanation given anywhere as to why he did not file affidavit disclosing his assets even after he was served with the show cause notice issued in the petition. An attempt is made to tender the affidavit today when the matter was already part heard. In my opinion, filing of the affidavit at this late stage is of no avail and does not establish why respondent no.1 could not have complied with the order made by the Court. In my opinion, therefore, so far as the respondent no.1 is concerned, his apology cannot be accepted as genuine or heart felt. As observed above, so far as the other respondents are concerned, they have not even bother to tender apology. The respondent nos. 1 to 4 and 6 and 7 are therefore, held guilty of having committed civil contempt of this Court.

5. So far as the aspect of the punishment is concerned, the respondent nos. 3 and 4 are ladies. In the affidavit filed by the power of attorney holder of the respondent no.3 it is stated that she is also ill. In my opinion, therefore, imposing only fine on

respondent nos. 3 and 4 will serve the interest of justice. So far as the respondent nos. 1 and 2 are concerned, in my opinion, they have to be sentenced to undergo imprisonment. So far as respondent no.2 is concerned, he has clearly disobeyed the order of the Court, he has not even justified his conduct of not filing affidavit, he has also not tendered an apology. So far as respondent no.1 is concerned, he appears to be the main person behind all the respondent. In my opinion, therefore, the respondent no.1 has also to be sentenced to undergo imprisonment. So far as the respondent nos. 6 and 7 are concerned, they are the directors of the respondent no.5 Company. They have also not filed any affidavit, they have also not tendered any apology. In my opinion, therefore, the respondent nos. 6 and 7 have also to be sentenced to undergo imprisonment.

6. In my opinion, taking overall view of the matter therefore, the following order would meet the ends of justice:-

The Respondent no.1 is sentenced to undergo

simple imprisonment for a period of two months and he is also directed to pay fine of Rs.2,000/.-. He is also directed to pay as and by way of cost Rs.10,000/- of this petition, to the petitioner.

The respondent no.2 is also sentenced to undergo simple imprisonment for a period of two months and he is also directed to pay fine of Rs.2,000/-. He is also directed to pay as and by way of cost Rs.10,000/- of this petition, to the petitioner.

So far as respondent nos. 3 and 4 are concerned, they are directed to pay fine of Rs.2,000/- each and also pay cost of this petition Rs.5,000/- each to the petitioner.

So far as respondent nos. 6 and 7 are concerned, they are sentenced to undergo simple imprisonment for a period of one month and they are also directed to pay fine of Rs.2,000/- each. They are also directed to pay cost of this petition Rs.10,000/- each to the petitioner.

Petition is disposed of.

At the request of the learned Counsel appearing for respondent nos. 1 to 4 and 6 and 7, the part of the order imposing imprisonment is stayed for a period of eight weeks from today, subject to condition that the amounts of fine and costs are to be paid within a period of two weeks from today.